BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

BRANDON L. KUKER)
Claimant)
VS.)
) Docket No. 241,368
DODGE CITY TIRE CENTER, INC.)
Respondent)
AND)
)
OAK RIVER INSURANCE COMPANY)
Insurance Carrier)

ORDER

Claimant requested Appeals Board review of Administrative Law Judge Pamela J. Fuller's March 22, 1999, preliminary hearing Order Denying Compensation.

Issues

On January 18, 1999, claimant was kicked and struck by a coworker while at work on the premises of the respondent. As a result of the altercation, claimant injured his low back and tail bone. Claimant seeks authorized medical treatment and temporary total disability benefits for these injuries.

The Administrative Law Judge denied claimant preliminary hearing benefits, finding claimant's accidental injuries did not arise out of and in the course of his employment with respondent. Claimant contends his injuries caused by the assault did arise out of the nature, conditions, obligations, and incidents of his employment in the same manner as any other accidental injury that occurred while at work. The respondent, however, argues the Administrative Law Judge's preliminary hearing Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The altercation between claimant and a coworker occurred on respondent's premises while the employees were at work. But the Appeals Board finds claimant's injuries did not arise out of his employment because the assault was a result of personal animosities between the employees not foreseeable by the respondent. See <u>Harris v. Bethany Medical Center</u>, 21 Kan. App. 2d 804, Syl. ¶ 2, 909 P.2d 657 (1995).

The dispute between these employees was over claimant driving the other employee's truck after work and spinning the truck's tires. This was a personal problem that had no relationship with the nature, conditions, obligations, and incidents of the employment. Additionally, there is no evidence contained in the preliminary hearing record that the employer had any reason to know or should have know the likelihood of the coworker assaulting claimant.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order Denying Compensation entered by Administrative Law Judge Pamela J. Fuller on March 22, 1999, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this	day of May 1999.

BOARD MEMBER

c: Robert A. Levy, Garden City, KS Ronald J. Laskowski, Topeka, KS Pamela J. Fuller, Administrative Law Judge Philip S. Harness, Director